

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STEVEN MCDERMOTT and)
STACEY MCDERMOTT)
Plaintiffs,)
v.) DOCKET NO: 04-CV-12253
FEDEX GROUND PACKAGE SYSTEMS,)
INC., T.S. PRUITT, ALLEGIANCE)
HEALTHCARE, INC., D. PONCE, E.W.)
WYLIE CORPORATION, D.W. SMITH,)
ARSENBERGER TRUCKING, INC., J.T.)
FOSBRINK, RYDER TRUCK RENTAL,)
LORRAINE ODZANA as)
ADMINISTRATRIX OF THE ESTATE)
OF JAMES J. ODZANA, SHORELINE)
TRANSPORTATION, INC., JACLYN)
PALETTA as ADMINISTRATRIX OF)
THE ESTATE OF MARIO J. CASTRO)
Defendants.)

**ANSWER OF DEFENDANTS ARSENBERGER TRUCKING, INC., and J.T.
FOSBRINK TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

FIRST DEFENSE

The Second Amended Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The defendants respond to the allegations of the Second Amended Complaint as follows:

I. Parties

1. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

2. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

3. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

4. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

5. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

6. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

7. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

8. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

9. The defendants admit the allegations contained in this paragraph.

10. The defendants admit the allegations contained in this paragraph.

11. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

12. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

13. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

14. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

II. Jurisdiction

15. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

16. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

17. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

III. Facts

18. The defendants deny the allegations contained in this paragraph.
19. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.
20. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.
21. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.
22. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.
23. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.
24. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.
25. The defendants deny the allegations contained in this paragraph.
26. The defendants deny the allegations contained in this paragraph.

27. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

28. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

29. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

30. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

31. The defendants deny the allegations contained in this paragraph.

32. The defendants deny the allegations contained in this paragraph.

IV. Negligence
Fedex Ground Package Systems, Inc.

33. The defendants repeat their responses to paragraphs 1-32 above as if fully set forth herein.

34. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

35. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

36. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

V. Negligence
T.S. Pruitt

37. The defendants repeat their responses to paragraphs 1-36 above as if fully set forth herein.

38. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

39. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

40. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

VI. Loss of Consortium
Fedex Ground Package Systems, Inc.

41. The defendants repeat their responses to paragraphs 1-40 above as if fully set forth herein.

42. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

43. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

44. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

VII. Loss of Consortium
T.S. Pruitt

45. The defendants repeat their responses to paragraphs 1-44 above as if fully set forth herein.

46. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

47. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

48. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

VIII. Negligence
Allegiance Health Care, Inc.

49. The defendants repeat their responses to paragraphs 1-48 above as if fully set forth herein.

50. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

51. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

52. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

IX. Negligence
D. Ponce

53. The defendants repeat their responses to paragraphs 1-52 above as if fully set forth herein.

54. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

55. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

56. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

X. Loss of Consortium
Allegiance Health Care, Inc.

57. The defendants repeat their responses to paragraphs 1-56 above as if fully set forth herein.

58. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

59. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

60. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XI. Loss of Consortium
D. Ponce

61. The defendants repeat their responses to paragraphs 1-60 above as if fully set forth herein.

62. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

63. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

64. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XII. Negligence
E.W. Wylie Corporation

65. The defendants repeat their responses to paragraphs 1-64 above as if fully set forth herein.

66. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

67. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

68. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XIII. Negligence
D. W. Smith

69. The defendants repeat their responses to paragraphs 1-68 above as if fully set forth herein.

70. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

71. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

72. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XIV. Loss of Consortium
E.W. Wylie Corporation

73. The defendants repeat their responses to paragraphs 1-72 above as if fully set forth herein.

74. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

75. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

76. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XV. Loss of Consortium
D. W. Smith

77. The defendants repeat their responses to paragraphs 1-76 above as if fully set forth herein.

78. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

79. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

80. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XVI. Negligence
Arsenberger Trucking, Inc.

81. The defendants repeat their responses to paragraphs 1-80 above as if fully set forth herein.

82. The defendants deny the allegations contained in this paragraph.

83. The defendants deny the allegations contained in this paragraph.

84. The defendants deny the allegations contained in this paragraph.

WHEREFORE, the defendants deny that the plaintiff is entitled to judgment in any amount.

XVII. Negligence
J.T. Fosbrink

85. The defendants repeat their responses to paragraphs 1-84 above as if fully set forth herein.

86. The defendants deny the allegations contained in this paragraph.

87. The defendants deny the allegations contained in this paragraph.

88. The defendants deny the allegations contained in this paragraph.

WHEREFORE, the defendants deny that the plaintiff is entitled to judgment in any amount.

XVIII. Loss of Consortium
Arsenberger Trucking, Inc.

89. The defendants repeat their responses to paragraphs 1-88 above as if fully set forth herein.

90. The defendants deny the allegations contained in this paragraph.

91. The defendants deny the allegations contained in this paragraph.

92. The defendants deny the allegations contained in this paragraph.

WHEREFORE, the defendants deny that the plaintiff is entitled to judgment in any amount.

XIX. Loss of Consortium
J.T. Fosbrink

93. The defendants repeat their responses to paragraphs 1-93 above as if fully set forth herein.

94. The defendants deny the allegations contained in this paragraph.

95. The defendants deny the allegations contained in this paragraph.

96. The defendants deny the allegations contained in this paragraph.

WHEREFORE, the defendants deny that the plaintiff is entitled to judgment in any amount.

XX. Negligence
Ryder Truck Rental

97. The defendants repeat their responses to paragraphs 1-96 above as if fully set forth herein.

98. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

99. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

100. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XXI. Negligence
Odzana

101. The defendants repeat their responses to paragraphs 1-100 above as if fully set forth herein.

102. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

103. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

104. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XXII. Loss of Consortium
Ryder Truck Rental

105. The defendants repeat their responses to paragraphs 1-104 above as if fully set forth herein.

106. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

107. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

108. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XXIII. Loss of Consortium
Odzana

109. The defendants repeat their responses to paragraphs 1-108 above as if fully set forth herein.

110. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

111. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

112. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XXIV. Negligence
Shoreline Transportation, Inc.

113. The defendants repeat their responses to paragraphs 1-112 above as if fully set forth herein.

114. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

115. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

116. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XXV. Negligence
Paletta

117. The defendants repeat their responses to paragraphs 1-116 above as if fully set forth herein.

118. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

119. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

120. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XXVI. Loss of Consortium
Shoreline Transportation, Inc.

121. The defendants repeat their responses to paragraphs 1-120 above as if fully set forth herein.

122. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

123. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

124. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

XXVII. Loss of Consortium
Paletta

125. The defendants repeat their responses to paragraphs 1-124 above as if fully set forth herein.

126. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

127. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

128. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the plaintiff to prove same.

AFFIRMATIVE DEFENSES

THIRD DEFENSE

The defendants deny each and every allegation of the Plaintiffs' Second Amended Complaint except as specifically admitted above.

FOURTH DEFENSE

By way of affirmative defense, the defendants say that the action is barred by the applicable statute of limitations and by the doctrines of laches.

FIFTH DEFENSE

By way of affirmative defense, the defendants say that if the plaintiff suffered damages as alleged, such damages were caused by someone for whose conduct the defendants are not legally responsible.

SIXTH DEFENSE

By way of affirmative defense, the defendants state that this action shall be dismissed for insufficiency of process.

SEVENTH DEFENSE

By way of affirmative defense, the defendants state that they reserve the right to assert further affirmative and other defenses as they become evident through discovery or investigation.

JURY DEMAND

The defendants demand a trial by jury.

The Defendants,
ARSENBERGER TRUCKING, INC., and
J.T. FOSBRINK
By their attorney:
MORRISON MAHONEY LLP

/s/ Lee Stephen MacPhee
Lee Stephen MacPhee
BBO # 312400
250 Summer Street
Boston, MA 02210
(617) 439-7500

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF System will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants this 5TH day of April, 2007.

/s/ Lee Stephen MacPhee
Lee Stephen MacPhee